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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,418	09/25/2000	Joel I. Dulebohn	660336.90918	4039

26710 7590 11/14/2002

QUARLES & BRADY LLP  
411 E. WISCONSIN AVENUE  
SUITE 2040  
MILWAUKEE, WI 53202-4497

EXAMINER

KAM, CHIH MIN

ART UNIT PAPER NUMBER

1653

DATE MAILED: 11/14/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/669,418

Applicant(s)

DULEBOHN ET AL.

Examiner

Chih-Min Kam

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8-11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-11 and 13 is/are rejected.
- 7) ☒ Claim(s) 1-5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Status of the Claims*

1. Claims 1-5, 8-11 and 13 are pending.

Applicants' amendment filed on August 12, 2002 (Paper No. 8) is acknowledged, and applicant's response has been fully considered. Claims 1, 9, 11 and 13 have been amended, and claims 6, 7 and 12 have been cancelled. Therefore, claims 1-5, 8-11 and 13 are examined.

### *Rejection Withdrawn*

#### *Claim Rejections – 35 USC § 112*

2. The previous rejection of claims 1-5, 8-11 and 13 under 35 USC § 112, first paragraph, is withdrawn in view of applicants' amendment to the claims, and applicants' response at pages 2-3 in Paper No. 8.

3. The previous rejection of claims 1-5, 8-11 and 13 under 35 USC § 112, second paragraph regarding missing steps in the method and the term "at least one amino acid, at least one metal ion and at least one organic acid", "the range" or "magnesium", is withdrawn in view of applicants' amendment to the claims, and applicants' response at page 4 in Paper No. 8.

### *Claim Objection*

4. Claim 1 is objected to because of the term "an organic acid selected from the group consisting of malic, citric or succinic acid". Since the Markush group is cited in claim, the term "an organic acid selected from the group consisting of malic acid, citric acid and succinic acid" is suggested.

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 8-11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8-11 and 13 are indefinite because of the use of the term "the level of composition". The term "the level of composition" renders the claim indefinite, it is unclear what the term means. Claims 9 and 11 are included in this rejection for being dependent on a rejected claim and not correcting the deficiency of the claim from which they depend. Use of the term "the antioxidation composition" instead of "the level of composition" in claims 9 and 11 is suggested.

Perhaps claim 8 can be amended as follows:

The method of claim 1, wherein the food product is milk.

6. Claim 9 is indefinite because of the use of the term or "65% solid solution of lysine:magnesium ion:malic acid:citric acid with a molar ratio of 1.49:1:2.16:0.72". The cited term renders the claim indefinite, it is unclear what the term means, e.g., whether the composition contain 65% of the solid mixture of lysine:magnesium ion:malic acid:citric acid in the solution by weight/weight or weight /volume. The period "." is missing in "0.72". Claim 9, for example recites the limitation " lysine:magnesium ion:malic acid:citric acid " in line 4. There is insufficient antecedent basis for this limitation in the claim because claim 1 only recites one organic acid in the composition. See also claim 11.

7. Claims 2-5 are objected indefinite because they depend from an objected claim, claim 1.

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**Conclusion**

8. No claims are allowed.

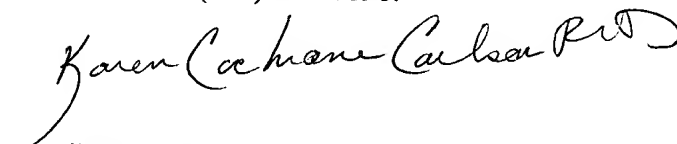
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Min Kam whose telephone number is (703) 308-9437. The examiner can normally be reached on 8.00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, Ph. D. can be reached on (703) 308-2923. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-0294 for regular communications and (703) 308-4227 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Chih-Min Kam, Ph. D.  
Patent Examiner

CMK

  
KAREN COCHRANE CARLSON, PH.D  
PRIMARY EXAMINER

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November 6, 2002